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08/637,894	04/25/1996	GEORGE TASH	P-2127-40	5079

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EXAMINER

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ART UNIT PAPER NUMBER

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 08/637,894
Filing Date: April 25, 1996
Appellant(s): TASH, GEORGE

Richard T. Lyon
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to both the "REMAND TO THE EXAMINER" mailed August 9, 2004 and the appeal brief filed October 6, 2003. This examiner's answer replaces the previous answer mailed November 17, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant has stated that claims 1-4, 6 and 9-17 stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

2,540,943	Scarella	8-1984
4,745,641	Tash	5-1988
1,644,436	Locke	10-1927

English language translation of FR 2,540,943.

(10) Grounds of Rejection

Art Unit: 3751

The following ground(s) of rejection are applicable to the appealed claims:

Claims 10, 11, 13, 14, 16, 1, 2, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Scarella. The Scarella reference discloses a plunger comprising: a handle 3; a bellows 5; and three ring-shaped seals 7 (and at 8), as claimed. The seals 7 are vertically stacked and of progressively smaller diameter from uppermost to lowermost when the plunger is oriented as illustrated in Fig. 1. Re claim 13, one of the seals is capable of being larger than an opening of a sink or drain depending upon the size of such opening which is not structurally recited in the claim. Further in this regard, note the English language translation of Scarella (translation) at page 5, lines 21-23. Re claim 1, the seals are annular, curved and bulbous, as illustrated in Fig. 1. Re claim 2, it is well settled that a process limitation in a product claim can not operate to distinguish a claimed product from a prior art product when the prior art product otherwise equates with the claimed product structure. Re claim 6, the bottom seal (at 8) includes a short vertical sidewall (between 8 and 9). Appellant argues at page 6 of the brief "three separate, sequentially-connected and progressively smaller

Art Unit: 3751

sealing rings are claimed as part of the appellant's toilet and sink drain plunger." The examiner can not agree.

Nowhere in the claims is there a recitation of

"sequentially-connected" sealing rings. Claim 1 merely recites a first ring "depending from the lowermost portion of said bellows", a second ring "depending from said first ring", and a third ring "secured to the underside of said second seal". The term "sequentially-connected" is neither found in claim 1, nor found in any other claim on appeal.

The quoted claim language is, however, subject to a broad interpretation which consequently is met by Scarella as discussed supra. Appellant argues at pages 6-9 of the brief Scarella teaches only two sealing structures at 6 and 9. The examiner can not agree. Noting the translation at page 5, line 19 through page 6, line 5, ribs 7 (four in number) illustrated on the exterior of the conical body 6 are provided for anchoring the conical body during use of the plunger in a toilet drain thereby preventing slipping and creating a seal.

Claims 12, 15, 17, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarella and Tash. Although the Scarella plunger is not plastic, as claimed, attention is directed to the Tash reference which discloses

Art Unit: 3751

an analogous plunger which further is plastic (col. 2 ln. 64 and col. 3 lns. 1-2). Therefore, in consideration of Tash, it would have been obvious to one of ordinary skill in the art to associate plastic with the Scarella plunger in order to utilize a commonly available, moldable material. Re claim 17, constructing the handle and bellows of a plunger as "unitary" is also taught to be desirable by Tash at column 2, lines 58-63. Appellant argues at pages 9-11 of the brief Scarella teaches only two sealing structures. The examiner can not agree. Scarella indeed discloses three ring-shaped seals 7 (and at 8), as discussed supra.

Claims 10-17, 1-4, 6 and 9 are provisionally rejected under 35 U.S.C. 103(a) as being unpatentable over Scarella and Tash as applied to claims 10-17, 1-4, 6 and 9 above, and further in view of Locke. Although the ring seals of the Scarella plunger are not continuous (sequentially connected), as disclosed (argued), attention is directed to the Locke reference which discloses an analogous plunger which further includes continuous ring seals 12. Therefore, in consideration of Locke, it would have been obvious to one of ordinary skill in the art to associate continuity with the Scarella rings seals in order to

Art Unit: 3751

facilitate drain engagement. Appellant argues at page 11 of the brief only claims 3, 4, 12, 15 and 17 were rejected over Scarella and Tash. The examiner can not agree as claims 10-17, 1-4, 6 and 9 are clearly rejected over Scarella and Tash as discussed supra. Appellant further argues at page 11 of the brief Scarella teaches only two sealing structures. The examiner can not agree. Scarella indeed discloses three ring-shaped seals 7 (and at 8), as discussed supra. Appellant argues at pages 11-12 of the brief that while Locke indeed does teach a continuous series of seals, there is no teaching in Locke of a "three sealing ring configuration with its bulbous annular curved shaped second sealing ring." The examiner can not agree, in that, all of the seals 12 (at least three) in Locke are "bulbous annular curved shaped" (like those in Scarella) as illustrated in Fig. 1, albeit closer in visual appearance to the seals disclosed by appellant.

(11) Response to Argument

Appellant's remaining arguments have been fully considered and either have been previously addressed or are not deemed persuasive in view of the prior art as

Art Unit: 3751

specifically applied in light of the level of skill in the
pertinent art.

For the above reasons, it is believed that the rejections
should be sustained.

Respectfully submitted,



Robert M. Fetsuga



Primary Examiner

Art Unit 3751

rmf

March 24, 2005

Conferees

dp 
cep 

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